

Court Hearing on 11/6/07 11/6/2007 9:55:00 AM

1 IN THE UNITED STATES DISTRICT COURT FOR THE
 2 NORTHERN DISTRICT OF OKLAHOMA
 3 STATE OF OKLAHOMA, ex rel. W.A.)
 4 DREW EDMONDSON, in his capacity as)
 5 ATTORNEY GENERAL OF THE STATE OF)
 6 OKLAHOMA and OKLAHOMA SECRETARY OF)
 7 THE ENVIRONMENT C. MILES TROBERT,)
 8 in his capacity as the TRUSTEE FOR)
 9 NATURAL RESOURCES FOR THE STATE OF)
 10 OKLAHOMA,)
 11)
 12 Plaintiff,)
 13) Case No.
 14 -vs-) 05-CV-329-TCK-SAJ
 15)
 16 TYSON FOODS, INC., TYSON POULTRY,)
 17 INC., TYSON CHICKEN, INC., COBB-)
 18 VANTRESS, INC., AVIAGEN, INC., CAL-)
 19 MAINE FOODS, INC., CAL-MAINE FARMS,)
 20 INC., CARGILL, INC., CARGILL TURKEY)
 21 PRODUCTION, LLC, GEORGE'S, INC.,)
 22 GEORGE'S FARMS, INC., PETERSON)
 23 FARMS, INC., SIMMONS FOODS, INC.,)
 24 and WILLOW BROOK FOODS, INC.,)
 25)
 Defendants.)
 TRANSCRIPT OF PROCEEDINGS,
 held before the Honorable Sam A. Joyner, Magistrate Judge
 in the United States District Court for the Northern
 District of Oklahoma on November 6, 2007.
 A P P E A R A N C E S
 For the Plaintiff: Mr. Louis Bullock
 Mr. Robert Nance
 Ms. Kelly Burch
 Mr. David Page
 Mr. Daniel Lennington
 Mr. Fred Baker
 Mr. David Riggs
 Mr. Trevor Hammons and
 Mr. Richard Garren
 Attorneys at Law

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1 think your suggestion is exactly right. We ought to find
2 a way to coordinate -- what are we talking about
3 specifics as opposed to 30,000 generalities about what
4 might happen.

5 THE COURT: Right. You may during the noon
6 hour want to spend a little time talking about maybe what
7 these defendants could offer in the way of coordination
8 that would help resolve some of the concerns that the
9 plaintiffs have before you hear a ruling by the Court.

10 MR. EHRICH: Happy to do it, Your Honor.

11 THE COURT: Well, let's do take a break. Let's
12 try to be back here, well, I guess 1:30. Let's just be
13 back 1:30 and we'll deal with the other three issues.
14 All right. We'll be in recess.

15 (Whereupon, the noon recess was held after
16 which the following record was made.)

17 THE COURT: Thank you very much. It's 66. Me
18 and the highway have a lot in common, we're worn but
19 that's very nice. All right. As a birthday present,
20 have you got something to offer?

21 MS. HILL: Your Honor, Theresa Hill on behalf
22 of the Cargill defendants. I hope we do and I appreciate
23 the half an hour that you gave us to work on your
24 birthday present. Hopefully it will save us some time
25 here. We had discussions both with our co-defendants and

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1 with the plaintiffs about the concerns with consolidating
2 the scheduling of 30(b)(6) notices to the State. And one
3 of the primary concerns of the defendants as a whole are
4 proceeding to have specific depositions for -- we want
5 Cargill specific questions. And to the extent that we've
6 asked issue topics and notices, other defendants also may
7 want to join in and ask questions of their own on those
8 same topics. So we're certainly willing to coordinate,
9 so when we get to topics all of the defendants can in the
10 same day or however many days proceed to ask questions on
11 those topics. However, we want to be clear that, you
12 know, Cargill will ask Cargill specific questions,
13 Peterson will ask Peterson specific questions, George's
14 and so on. And in agreeing to coordinate in this way,
15 our co-defendants also want to join us in the discussion
16 of what are the proper topics that we should go with.
17 And so, we proposed a procedure that I think will work
18 and we remain optimistic that by -- that it will work.
19 And by December 3rd, we'll get together with our
20 co-defendants and we'll put together a list of topics.
21 And these are the topics that we want to proceed with and
22 proceed with depositions and scheduling them in such a
23 manner that if it's alleged runoff which is one of the
24 examples of the Cargill notice, for instance, the State
25 will come back and tell us, you know, well, I think this

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1 is one witness and we say, well, we have seven
2 defendants, how much time, and we'll engage in that
3 discussion and work that out after we look at these
4 topics that are jointly agreed topics, but yet each
5 defendant will have specific questions relating to their
6 company on those topics. And then after December 3rd
7 when we get the State this list of topics, we expect some
8 going back and forth on the propriety of the topics as
9 well as the number of witnesses and the number of time --
10 the amount of time we need to complete those depositions.
11 But this is the way to start the conversation in such a
12 way that all these distinct topics the defendants can
13 schedule depositions in a way hopefully that we can get,
14 you know, the same witness if they're taking about the
15 same kind of issues, to address them for each company
16 specific. But we're not, you know, waiving the right for
17 seek company specific information, we're just saying we
18 will coordinate together these topics so we can do it in
19 the same time frame. So we've agreed to get this list to
20 the plaintiff's counsel by December 3rd and do the best
21 coordinated list that we can do. As of December 3rd the
22 defendants as a whole are not representing this as the
23 end-all, be-all list for everyone, but these are -- this
24 will be our list as of December 3rd on how we want the
25 topics that we can proceed on in this manner. And the

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1 State will voice, I'm sure, their own reservations or
2 concerns, I suppose, about that, but we have agreed to
3 engage in those conversations and further our meet and
4 confer process after a consolidated list is given to them
5 on December 3rd. And so, we would ask that our motion to
6 compel be held in abeyance until we can further these
7 joint discussions and I think the State has agreed, and
8 I'll let them make their comments, to hold their motion
9 for protective order in abeyance as well.

10 THE COURT: All right. We may have one small
11 problem, Ms. Hill. Actually, anyone that appears at the
12 podium has to have made an appearance in the case. We
13 may have a deficiency there, in a couple ways. I don't
14 mean literally, of course. So do we have a name?

15 MS. HILL: You know, that's top secret
16 information. I can't make that appearance for you today,
17 but we will share that information with the Court just as
18 quickly as I can.

19 THE COURT: Okay. That's good. And do we know
20 when that's going to happen?

21 MS. HILL: December 15th if not sooner.

22 THE COURT: Good. Well, congratulations.
23 We'll let you get by with it this time with no name and
24 no appearance.

25 MS. HILL: Thank you, Your Honor.

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1 THE COURT: Let the record reflect that we have
2 had two counsel in one at the podium. Okay. We'll pin
3 down what's going to happen in a court order, I guess,
4 after we hear from the plaintiffs.

5 MR. NANCE: Thank you, Your Honor, and thank
6 you for encouraging a measure of statesmanship on both
7 sides on this matter. Ms. Hill has essentially recited
8 our agreement. Defendants are going to confer among
9 themselves and come up with the best joint list of
10 30(b)(6) topics that they can and present that to the
11 State by December 3rd. We will confer with them after
12 that regarding the list and any objections or
13 improvements we can suggest on it and we will try to get
14 a coordinated set of 30(b)(6) depositions moving after
15 that. We recognize that the defendants are doing this
16 without prejudice to an individual 30(b)(6) notice by
17 some other defendant and we're doing this without any
18 prejudice to any objection we might have to such an
19 additional 30(b)(6), but that's a bridge we will cross
20 when we get to it. We hope that the Court finds that
21 satisfactory and in the spirit Ms. Hill has suggested,
22 we're willing to hold our motion for protective order in
23 abeyance until this processes gets underway and we see
24 how well it works.

25 THE COURT: All right. What do you think the

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1 court order should say?

2 MR. NANCE: I don't know the Court needs to
3 enter any order at this point other than noting that the
4 motions are in abeyance and that we're going to meet and
5 confer subject to the agreement that we've announced
6 here.

7 THE COURT: All right. So, parties are going
8 to meet and confer.

9 MS. HILL: Mr. Nance, we're -- this discussion
10 has 30(b)(6) notices without prejudice to fact witnesses.

11 MR. BULLOCK: Right.

12 MR. NANCE: Right.

13 MS. HILL: Okay.

14 THE COURT: Okay. There is a question that
15 I've asked before and that's the question whether or not
16 you want the Court to monitor the number of depositions
17 that are being taken and to submit to the Court every
18 month the depositions that have been taken and the
19 schedule for depositions to be taken. I mean, that was
20 very helpful in the CFS case, but they had 175
21 depositions. So maybe this case isn't that big. Does
22 anyone want that kind of structure? Do you want an
23 official reporting every month as to what was taken and
24 what is to be taken next month or do we not have that
25 many? If there's not a groundswell of support --